AMERICAN FEDERATION OF LABOR

WEEKLY NEWS SERVICE

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WHOLE NO. 1223 — WILLIAM GREEN, President — WASHINGTON, D. C., SATURDAY, SEPTEMBER 22, 1934 — FRANK MORRISON, Secretary — VOL. 24, NO. 38

NRA — WE DO OUR PART

If you put a chain around the neck of a slave, the other end fastens itself around your own.—Ralph Waldo Emerson.

UNION LABEL TRADES DEPARTMENT

Text of National Labor Relations Board's Decision in the Case of Houde Engineering Corporation and Automobile Workers Union

Company Officials Flout the Principle, Set Up by the Board, that Under Section 7-A of the Recovery Act "Representatives of the Majority Should Constitute the Exclusive Agency for Collective Bargaining with the Employer."

National Recovery Administration Orders the Corporation to Surrender the Blue Eagle, but Houde Officials Refuse to Obey the Demand—Text of Labor Board's Decision Should be Read by All Workers.

By A. F. of L. Weekly News Service.

The refusal of the Houde Engineering Corporation to abide by the majority-rule plant under the National Labor Relations Board makes the decision an epochal one demanding the attention of every working man and woman.

In an election for collective bargaining representatives held in the corporation's plant under the jurisdiction of the National Labor Board, United Automobile Workers' Federal Labor Union No. 18839, affiliated with the American Federation of Labor, secured not only a majority but also a good majority of all the employes of the plant.

The Houde Corporation refused to recognize the Automobile Workers' Union as the collective bargaining agency for the employes. It was on this issue that the case went to the National Labor Relations Board.

The board upheld the principle of majority rule in elections for collective bargaining agencies, declared that the Houde Corporation had violated the collective bargaining provision of Section 7-A of the National Industrial Recovery Act, said that the corporation must recognize the Automobile Workers' Union "as its employes' exclusive agency for collective bargaining," and directed that this decision be complied with this rule within ten days or the matter would be referred to the National Recovery Administration and to the enforcement agencies of the Federal Government for appropriate action.

The corporation refused to recognize the decision as binding, in which subversive action it was supported by the antiunion National Association of Manufacturers.

The National Recovery Administration ordered the Houde Company to surrender the Blue Eagle. The corporation refused to do so.

William Green, president of the American Federation of Labor, denounced the action of the Houde Corporation as a "challenge to the Government."

Frank Morrison, secretary of the Federation, declared the Labor Board's decision upheld the contention of organized labor that the union should be "the agency for collective bargaining."

The case will undoubtedly go to the Supreme Court of the United States for final determination.

The National Labor Relations Board's decision is of great importance to the organized labor movement. It should be read and studied by all workers. The text of the decision follows:

This case came before the board upon complaint of the union that, although it had been chosen as the collective bargaining agency by a majority of the company's employes at an election conducted by the National Labor Board, the company declined to recognize the union as the collective bargaining agency for all the employes eligible to vote in the election. The company insisted that under Section 7-A of the Recovery Act it was obligated to bargain collectively not merely with the union but also with the organization voted for by the minority of employes.

Purpose of Section 7-A

The question at issue is one of statutory interpretation, but it cannot be answered by a mere reference to the language of Section of 7-A, much less by abstract arguments about the rights of majorities and minorities. It is necessary to consider first of all the objects of the statute, and then the effect of the company's interpretation upon the achievement of those objects. The fundamental purpose of Section 7-A was to encourage collective bargaining with all that implies. Employes were to "have the right to organize and **bargain collectively**" and to be free from interference in self-organization **for the purpose of collective bargaining."**

Employers' Duty

These phrases are full of meaning. The right of employes to bargain collectively implies a duty on the part of the employer to bargain with their representatives. Without this duty to bargain the right to bargain would be illusory, and Congress did not intend the right to be sterile. The National Labor Board is a series of decisions, and the Petroleum Board in one of its most important cases, have established the incontestably sound principle that the employer is obligated by the statute to negotiate in good faith with his employes' representatives; to match their proposals, if unacceptable, with counter-proposals; and to make every reasonable effort to reach an agreement.

Collective Bargaining Leads to Agreements

Collective bargaining, then, is simply a means to an end. The end is an agreement. And, customarily, such an agreement will have to do with wages, hours and working conditions, and will have a fixed duration. The purpose of every such agreement has been to stabilize, for a certain period, the terms of employment, for the protection alike of employer and employe. It is only where all that transpires is a demand by employes for better terms and an assent by the employer, but without any understanding as to duration, there has been no collective agreement, and neither side has been bound to anything.

Meaning of "Collective Bargaining"

Section 7-A must be construed in the light of the traditional practices with which it deals, and the traditional meanings of the words which it uses. When it speaks of "collective bargaining" it can only be taken to mean that long-observed process whereby negotiations are conducted for the purpose of arriving at collective agreements governing terms of employment for some specified period. And in prohibiting any interference with this process, it must have intended that the process should be encouraged, and that there was a definite good to be obtained by promoting the establishment of employment relations through collective agreements.

Congress Approved Collective Bargaining

That this was the intention of Section 7-A is apparent not only from its language but also from other provisions of the Recovery Act. Thus Section 1 states that it is the policy of Congress, among other things, "to induce and maintain united action of labor and management under adequate governmental sanctions and supervision." And Section 7-B provides that the President "shall, so far as practicable afford every opportunity to employers and employes in any trade or industry . . . with respect to which conditions referred to in clauses (1) and (2) of subsection (a) prevail" (that is, in any business where the right to collective bargaining has not been interfered with) "to establish by mutual agreement the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary . . . to effectuate the policy of this title."

It is obvious that these desired standards, and the "united action of labor and management" which Congress contemplated, could scarcely be effected except by collective agreements between employers and representatives of employes, resulting from collective bargaining.

Collective Bargaining Essential for Peace

Apart from these specific provisions of the Act, it is evident that, taking the Act as a whole, its objects could not be fully achieved without collective undertakings between employers and the representatives of employes. The fundamental aim of the Act was to restore prosperity by increasing purchasing power. Industry was to be stabilized by permitting employers to combine together, immune, to a large extent, from the restrictions of the anti-trust laws, for the purpose of eliminating cut-throat competition, waste, and the grosser evils of unplanned production. At the same time, hours were to be reduced, wages increased, and re-employment effected on the largest possible scale.

These vital readjustments could not be brought about by the law alone. Close and continuing cooperation between management and labor was essential in working out the requirements and in seeing to it that the gains which industry might derive from its new powers to control production and prices would be equitably shared with the wage earners, and thus serve to increase purchasing power. Collective bargaining and the collective agreements resulting therefrom would be an essential part of this process.

And in the projected stabilization of economic forces, there must be provision for fair competition. It was intended that standards of fair trade and working conditions should also be stabilized as far as possible, and should be reasonably uniform within each particular industry. In achieving these objects, collective agreements would play an important, if not indispensable, part, since the uniform requirements fixed in the codes were never intended to do more than set a minimum.

Houde Company's Separate Bargaining Contention

In approaching the issue involved in this case, it is clear that any interpretation of Section 7-A which in practice would hamper self-organization and the making of collective agreements would be contrary to the Act. The Houde Company insists not merely on its right but on its duty under the statute to bargain separately, and whenever requested, with two groups of its employes, one representing the majority and the other the minority. And the question presented, therefore, is whether or not this interpretation has resulted in practice in defeating the objects of the statute.

The facts may be briefly recounted. The Houde Company is engaged chiefly in the manufacture of certain automobile parts which are shipped in interstate commerce from the company's plant in Buffalo. Its employes are skilled workers, homogeneous in occupation, and the company concedes that there are no differences of employes which because of their peculiar occupations should be considered as separate units for purposes of collective bargaining.

Company Union Promoted to Thwart A. F. of L.

For several years prior to the advent of the union last fall, athletic events among the men had been promoted by a loose-knit association, if it can be called such, which consisted simply of a treasurer and a chairman in charge of athletics. The association seems to have had no formal name, no meetings of any sort and no listed members. Small admission fees to the various events supplied the source of revenue.

In the autumn of 1933 suggestion was made to join the United Automobile Workers' Federal Union No. 18839, affiliated with the American Federation of Labor, and within a very short time after this became known a sudden and significant change took place in the social athletic association. Petitions were circulated in the plant for the nomination and election of officers and for by-laws for the association. These forms stated in substance that the association, by a majority vote, could take up with the management questions of working conditions. A clause to that effect was written into the by-laws, which were prepared by the representative nominated by the workers. The name of the association became the Houde Welfare and Athletic Association, and it was given a definite structure and form, with members, officers and a grievance committee for the purpose of negotiating with the company.

Company Refuses to Recognize Union

There is no evidence that these developments, following immediately upon the beginning of unionization, were sponsored by the company, but it is clear that they followed that the company gave to the association its moral blessing, and looked with favor upon its activities. The constitution of the association had been reshaped, a request of the union representatives for recognition was denied, and at the same time a wage increase sponsored by the association was granted to all employes. The company thereafter refused to treat with the union representatives, unless they would disclose the union membership list.

A. F. of L. Wins Election

Ultimately, after hearings on the complaint of the union, the Buffalo Regional Labor Board and the National Labor Board, the company in each case declined to attend, an election was ordered to be held in the plant on March 21, and 10 working days beforehand, another general wage increase was granted by the employer as a result of requests by the association. The election resulted in 1,195 votes cast, of which 791 were cast for the association, with about 400 not voting. Thus the union was established beyond question as the representative of the majority, not merely of those voting, but of all the employes.

There is evidence that two of the principal officers of the association were active Federal Vice Regional Board before the election that if the association did not receive a majority of the votes cast the union would become the union as the exclusive bargaining agency. In the light of this alleged agreement the case might be decided on the ground that the association had lost by the election whatever standing it might have had as a collective bargaining agency; but since the existence of the agreement is denied by the company it is not disposed to decide the case upon such a narrow issue.

Company's Dual Policy

Since the election, the company's practice has been to meet every week with the officers of the association, with the association's committee and then with the union committee, or vice versa. It never agreed to the proposal to negotiate to be later noted, matters of secondary importance, such as the question of toilet facilities, safety measures, lighting and ventilation, coat racks, slippery floors, and the like, were discussed, while the company would inform one committee of what it had been discussing with the other. Whenever, as a result of any meeting, the company concluded to take some action, a statement would be made to the effect that the board of what it had arranged to do.

Collective Bargaining Barred

It is apparent that the matters thus discussed were the ordinary every-day details which any employer would normally be free to discuss with any employe, or group of employes, and which in no sense constitute the recognized subjects of collective bargaining, namely, wages, hours and basic working conditions. The company permits the proposals of this sort to the company, because the company from the beginning has declared that no collective agreement would be entered into with it.

Group Insurance Adopted Without Union

One thing of general importance, however, resulted from the various meetings with the association. Apparently it is significant that the matter was not discussed with the union committee. In the autumn there was put into effect a plan of group insurance, but the proposal was dropped by the company on request of the association said that they thought the time was not ripe. Some two months later the proposal was renewed and was taken up by the company with the association's committee. The proposal was accepted and arrangements for the terms of the policy should be, in effect, the same as those adopted by the premium and the coverage—factors which would affect all of the employes.

The association's committee and the company decided the matter without consulting the union, and a circular was then distributed to all employes, in which the vice-president and general manager of the company approved the plan, and stated that it was being sponsored by the association. Nearly all of the employes agreed to take the insurance, and the association received credit for its part in making the insurance available.

Company's Policy Defeats Recovery Act's Object

It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the objects of the statute.

In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion and friction between the leaders of the committees. The leader of the association's committee, who testified at the hearing, evidently enjoyed the prestige of his position and the close contact which it brought him with his superiors. He said that his association wished to be able to present grievances directly to the company, instead of through the union, because "maybe" the employes thought that better terms could thus be obtained.

Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employes, to make them unsure to which organization they should from time to time adhere to, and to maintain permanent and artificial division in the ranks.

Collective Agreements Blocked

But even if the company's policy had not resulted in impairing the effectiveness of collective bargaining—which it could hardly have failed to do anything else—it clearly prevented any arrival at collective agreements in the manner intended by the statute.

The company's conception of its duty was merely this: that the company should periodically receive committee, listen to its suggestions, discuss them politely and then act upon them or not, as it might see fit.

If that be all that the statute requires, the company was within its rights, but, as has been pointed out, the statute calls for more than that.

It was not enacted to promote discussions. Such an anaemic purpose was foreign to the Recovery Act. The statute was enacted to promote the making of collective agreements covering terms of employment for definite periods, as the essential part of the process of stabilizing industry upon a new and juster basis. The company was frank in admitting that it intended to make no such agreement. Its policies were the natural result of that attitude. They were admirably designed to nullify the purposes of the statute.

Majority-Group Agreement Necessary

The company conceded at the hearing before this board that if a collective agreement covering terms of employment were to be made, it would necessarily have to apply to all of the workers in the plant. The company also was to endeavor in good faith to negotiate and arrive at such an agreement necessarily in the case of a majority-rule agreement it would be impractical to negotiate and enter into it with the minority group. The practical course, and the one which we think the statute plainly calls for, would be to negotiate and enter into an agreement (if one could be arrived at) with the majority group, who would best be able to express the desires of the workers.

At the hearing the company suggested the only other possible course, namely, that the company might bargain collectively and enter into a collective agreement with a composite committee made up of representatives of the union and the association, in proportions corresponding to the votes cast in the election. This arrangement would have the merit of including both the majority and the minority representatives in the negotiations, but on the face is just and democratic. And where, as in the automobile settlement, the parties had agreed to such a plan, there could be no possible conflict with the statute, which clearly permits the majority to set up any fair plan of representation which they desire.

Company Plan Hinders True Collective Bargaining

But there was no such agreement in this case; and the plan proposed by the company, being opposed by the majority, would have hindered true collective bargaining even more effectively than the policies heretofore pursued by the company. Counsel for the company, who was also its secretary and one of its directors, recognized at the hearing that differences within the ranks of the proposed composite committee might develop, and the possibility was evidently not displeasing to him. The company would have, he said, "the benefit of their confidence." It is the benefit of hearing the divergent points of view in arriving at our decisions," and if such differences developed "we might possibly bring in men who were not on the committee, with the committee present, and find out

Collective Bargaining Interpreted Erroneously

This vision of an employer dealing with a divided committee and calling in individual employes to meet the company in arriving at a decision is certainly far from what Section 7-A must have contemplated in guaranteeing the right of collective bargaining. To bring about the proper representation by a composite committee would weaken their votes and subject them to counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee.

Hence the majority representatives would still control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority.

The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissension and rivalry within the ranks of the collective bargaining agency. He could by lawful means ascertain the views of particular employes regarding proposals which were under consideration, but he would have no right to insist that the representatives of the majority should, in the absence of any agreement, examine their proposals only in conjunction with some other group.

Majority Rule Necessary

We have concluded, therefore, that the only interpretation of Section 7-A which can give effect to its purposes is that the representatives of the majority should constitute the exclusive agency for collective bargaining with the employer. This interpretation is neither strained nor novel. Similar interpretations of similar provisions have been made whenever the question has presented itself.

War Labor Board Adopted Majority Rule

Thus the National War Labor Board, created by President Wilson in the midst of war, and headed by Taft and the late William Howard Taft as joint chairmen, promulgated as one of its principles a clause almost identical with Section 7-A, reading as follows: "The right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized, and employers of labor shall not be denied, abridged or interfered with by employers in any manner whatsoever."

In application of this principle the board in numerous instances recognized the majority rule. In what was perhaps its most famous case, that involving the employes of certain munitions plants in Bridgeport, the board worked out a detailed plan of organization for collective bargaining, and this plan expressly based upon the majority rule. And in a general plan for the election of representatives in war industries the board again promulgated the majority rule.

Majority Rule Adopted by Railroad Labor Board

Two years later, by the Transportation Act of 1920, the Railroad Labor Board was created, and the statute provided that all disputes were to be considered in conferences between the carriers and "representatives designated and authorized to confer . . . by the employes . . . directly interested in the dispute."

This language is even more general than that of Section 7-A, but the Railroad Labor Board, charged with construing and enforcing the statute, in one of its first important cases laid down the majority rule in the following words: "The majority of any craft or class of employes shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have authority to make all agreement which shall apply to all employes in such craft or class, and such agreement shall infringe, however, upon the right of employes not members of the organization representing the majority to present grievances whether in person or by representatives (as may be provided by the Railroad Labor Board consistently applied these principles in its decisions. In two of these cases the question came before the Supreme Court of the United States, which, while it did not pass on the legal status of the unions under the board's ruling, stated that the principles laid down by the board were "just and reasonable."

Employers Applied Majority Rule Until Company Union Members Joined Outside Unions

Custom was in accord with these precedents. Even employers who set up employe representation plans consistently provided in these plans, according to a recent study by the National Industrial Conference Board, that representatives for collective bargaining should be selected by majority vote. So far as appears, the majority rule was never questioned until employes who had been shepherded into company unions began, under the protection of Section 7-A, to form bona fide unions and to demand the right to bargain collectively through those unions.

Houde Company Demands List of Union Members

Thereupon a struggle ensued which has not yet run its course. Certain employes, who were dissatisfied by new developments, refused at first to deal in any way with the union unless they would reveal their lists of members. The Houde Company, among others, adopted this policy. The unions, fearing discriminatory discharges, declined, as the union did in this case, to reveal the names of their members. At this juncture the National Labor Board, which had been in office several months before, revived the device of conducting elections by secret ballots, which had been used under somewhat different circumstances by the National War Labor Board, and thereby afforded a new method of determining by whom the employes wished to be represented.

Collective Bargaining Elections Prevented

The elections, however, were frequently blocked by employers' refusal to furnish the payrolls or other records by which the identity of the employes and their right to vote could be established. The Houde Company, by such methods, prevented an election which the Regional Labor Board in Buffalo, Regional Labor Board in December, 1933, had ordered to be held, and a labor union designated by the majority, some employers still declined to deal with the union, or to do more than negotiate separately with it and with the representatives of the minority (generally a company union) —a procedure which, as in the Houde case, effectively prevented collective bargaining.

Roosevelt Endorses Majority Rule

In order to dispose of these questions the President issued an Executive Order on February 1, 1934, which expressly authorized the National Labor Board to order and conduct elections, and provided in substance that those who were selected by "at least a majority of the employes voting" should "represent all the employes eligible to participate in such an election for the purpose of collective bargaining."

Thus the President in his interpretation of the intent of Section 7-A followed the precedents already referred to in which the majority rule had been laid down.

On March 1, 1934, the National Labor Board followed suit in the Denver Tramway case in a short opinion from which one member of the board partially dissented. It was under the authority of this Executive Order and pursuant to the holding in the Denver case which was reiterated in the Houde decision of March 9, that the election in the Houde plant finally took place.

Congress Endorsed Majority Rule

Public Resolution No. 44, approved June 19, 1934, for the first time provided a method and procedure for conducting elections, in order to determine "by what person or persons or organization" the employes desired to be represented. If the rule were that the representative selected with each group regardless of its numerical strength, an election would be futile. Congress in expressly providing for elections necessarily rejected plural bargaining, and almost as certainly endorsed majority rule.

Senator Walsh, chairman of the Committee on Education and Labor, which had had extensive hearings on the Wagner Labor Disputes Bill, for which the resolution was eventually substituted, pointed out to the Senate that under the resolution "the board may call both groups together and may say to them we will have an election. We will conduct the election and determine who represents a majority of the employes." And again later: "The provision in the joint resolution providing for elections is most helpful. . . . It will enable somebody with governmental authority, and as were the interstate character of the company's business and the constitutionality and validity of NIRA and the Code, to go into the books of the corporations to whom restitution of wages will be due, as provided in the agreement.

"The company agreed to pay expenses incurred by the Code Authority in uncovering the violations, and to permit the Code Authority's accountant to go over the company's books once a month at the company's expense to determine whether the company is actually complying with the Code.

"If the $17,500 posted is found to be insufficient, the agreement specifies that the deficiency was assumed by the company. The company's books are to be furnished the Code Authority accounts due under the agreement, and final determination of any dispute is given to the impartial chairman of the industry."

MARRIED WOMEN JOB BAN SOUGHT BY MINE WORKERS

By A. F. of L. Weekly News Service.

Coaldale, Pa.—A proposal to bar wives of coal miners from jobs created control dissension at the biennial convention here of District No. 7 of the United Mine Workers of America.

The Jeddo local of the Mine Workers has ruled that any members whose families are benefitted by work in the silk mills during the strike shall be suspended for 5 years. The resolution committee opposed the proposal on the ground that the convention had not jurisdiction. The report caused so much opposition that the committee withdrew it and agreed to make a further study of benefits accruing to families of married woman's place is in the home.

The resolution calls for the endorsement to candidates for political office whose labor record has secured the approval of the organization and demanded greater efforts in equalizing work time.

President Michael Hartneady told the convention that Communism will find no fertile breeding ground" in the United Mine Workers.

Factory Workers Increased In August; Payrolls Gained

By A. F. of L. Weekly News Service.

Washington.—The number of workers employed in factories increased 8 per cent and the contents of pay envelopes 12 per cent between July and July, according to a report by Secretary of Labor Perkins. The increase brought the total employment to about 73,000, with $1,000,000 per week added to wages.

It was pointed out, however, that the increase in employment and pay envelope contents did not include all industries. The number of employed workers actually decreased in certain mine manufacturing industries, including anthracite mining, with the result that the net gain was only 15.3%.

Miss Perkins stressed the point that neither the increase in employment nor payrolls indicated general business improvement, but reflected merely the seasonal activity in clothing, canning, shoes and a number of other industries, including "more normal operations following the customary July shut-down."

Wages of Anthracite Miners Suffer Six Per Cent Reduction

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Philadelphia, Pa.—The statement in Washington by Secretary of Labor Frances Perkins that the number of employed workers in the anthracite mining industry and the wages paid suffered a considerable loss during August, as were also the interstate character of the company's business and the constitutionality and validity of NIRA and the Code . . . go into the books of the corporations to whom restitution of wages will be due, as provided in the agreement.

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LOMA DRESS CO. PAYS $17,500 BACK WAGES

By A. F. of L. Weekly News Service.

New York.—The National Recovery Administration today in the first down heavy on the wage-chiseling Loma Dress Co., Inc., of this city, with the result that the concern decreased by a certified check for $17,500 to meet the claims for back wages due its employes and not paid them as required by the code for the dress manufacturing industry.

In announcing the action of the company the NRA said:

"In the agreement signed by the company, all violations charged in the bill of complaint filed on August 23 were admitted, as were also the interstate character of the company's business and the constitutionality and validity of NIRA and the dress code. . . . Each of the persons to whom restitution of wages will be due is named in the agreement.

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